

UNITED STATES OF AMERICA  
Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on Post E.C.S.

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Docket No. C99-1

OFFICE OF THE CONSUMER ADVOCATE  
COMMENTS IN REPLY TO AMENDMENTS TO THE  
SPECIAL RULES OF PRACTICE PROPOSED BY  
THE POSTAL SERVICE  
(June 18, 1999)

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The Office of the Consumer Advocate (OCA) hereby files comments in reply to amendments to the Special Rules of Practice proposed by the Postal Service.<sup>1</sup> OCA opposes the proposed limitation on discovery that would only allow requests for "information relevant and material to the question of whether Post E.C.S. is a postal service."<sup>2</sup> This is consistent with the reasoning presented in OCA's Response to the Motion of the Postal Service for Partial Reconsideration of P.O. Ruling No. C99-1/2.<sup>3</sup>

The Postal Service also would specify, in Rule 2E, that discovery on the Postal Service must end "prior to the receipt into evidence of complainant's case-in-chief." OCA believes that it would be imprudent and premature to foreclose absolutely any

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<sup>1</sup> "United States Postal Service Comments on the Special Rules of Practice," filed June 8, 1999.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> Also filed this date

further discovery on the Postal Service on a date certain, occurring prior to the filing of Complainant's case-in-chief.<sup>4</sup>

OCA fears that Complainant may make assertions about the operation or availability of Post E.C.S. that might not already be part of the record developed up to that point. The accuracy of such assertions may only be possible to establish through further questioning of the Postal Service. It must be borne in mind that most information concerning Post E.C.S. is uniquely within the control of the Postal Service, and a need for additional evidence from the Postal Service that would be essential to determine the postal or nonpostal character of Post E.C.S. could arise during the hearing on United Parcel Service's (UPS) direct case. Leaving open the discovery door during that phase of the proceeding would enhance the development of a complete and accurate record upon which the Commission may base its determination.

The Postal Service discusses a similar issue in the context of discovery on the Postal Service's rebuttal of the UPS direct case.<sup>5</sup> The Postal Service suggests deferring the question whether to make available written cross-examination on Postal

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<sup>4</sup> The Postal Service envisions rigid enforcement of the proposed special rule under a conforming procedural schedule:

A procedural schedule . . . will aid participants in forming expectations about the proceeding, so that no participant can claim surprise when opportunities to conduct discovery or offer evidentiary presentations are forever foreclosed.

"United States Postal Service Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2," filed June 8, 1999.

OCA also wishes to point out that the foreclosure of opportunities to conduct discovery is not as absolute as the picture painted by the Postal Service since Special Rule 2D, which the Postal Service does not propose to amend, allows participants to continue to submit legitimate follow-up questions until such time that the original question has been answered fully.

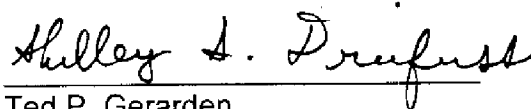
<sup>5</sup> Postal Service Comments on the Special Rules of Practice at 6-7.

Service rebuttal evidence. The Service envisions a requirement that a formal request for written discovery be lodged by a participant. Speaking for this office, OCA fully anticipates an interest in written discovery on the Postal Service's rebuttal case. A more efficient and equitable course of action would be to schedule written cross-examination on the Postal Service case now, but omit that phase if it appears that no participants wish to submit written discovery requests.

Wherefore, OCA requests that: (1) the scope of discovery be declared broad enough to accommodate the information identified as relevant and within the Commission's jurisdiction in OCA's Response to the Request for Partial Reconsideration; and (2) written cross-examination on the Postal Service's rebuttal case be explicitly included in the procedural schedule.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE

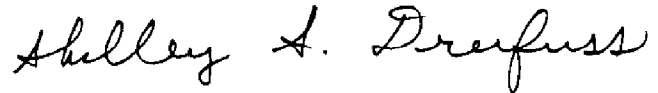
A handwritten signature in cursive script, reading "Shelley S. Dreifuss", written over a horizontal line.

Ted P. Gerarden  
Director

Shelley S. Dreifuss  
Attorney

# CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

A handwritten signature in cursive script that reads "Shelley S. Dreifuss".

SHELLEY S. DREIFUSS  
Attorney

Washington, D.C. 20268-0001  
June 18, 1999